

¹ Claimant's Request for Review filed April 10, 2007.

The ALJ found that claimant's entitlement to temporary total disability benefits and medical expense payments are issues to be "determined at the time of final award after the receipt of expert medical testimony." The ALJ based that decision on the determination of Pedro A. Murati, M.D., that claimant had reached maximum medical improvement on July 27, 2006.

In 2002, claimant was diagnosed with interstitial cystitis and an overactive bladder. As a result of the symptoms and problems related to the overactive bladder condition, an InterStim generator was implanted in November 2003. The implant greatly reduced the level of claimant's bladder problems and pain. The InterStim device was used to control the overactive bladder. In claimant's case, it also gave her relief from the pain and symptoms due to her interstitial cystitis.

Steven Lawton, M.D., in his January 3, 2007 report, stated that the InterStim implant is not related to claimant's interstitial cystitis, as "there is no implantable device for interstitial cystitis overall."²

Claimant worked for respondent, Raymond Matthew, D.D.S. Part of her duties included cleaning respondent's restroom. On January 13, 2005, while cleaning the restroom, claimant bent over. She testified that as she raised up, she hit her right buttock on the doorknob hard enough to move or displace the implant. At some point after the incident, claimant went to see Dr. Lawton, who was one of her treating physicians for the interstitial cystitis and overactive bladder. On June 10, 2005, Dr. Lawton performed an aspiration of the fluid around the implant. The results of that test showed that claimant had a staph infection. Surgery to remove the implant was performed on June 16, 2005. After the implant was removed, claimant started to experience symptoms again related to the overactive bladder and interstitial cystitis. Therefore, after the infection cleared up, claimant had a second InterStim implant. That procedure occurred on September 22, 2005. However, the second implant did not relieve her symptoms. The second InterStim implant was removed on December 26, 2005.

Dr. Lawton, in his May 11, 2006 report, indicated that claimant may be at maximum medical improvement.

On July 27, 2006, claimant saw Pedro A. Murati, M.D., at the request of her attorney for an independent medical examination. At that time, Dr. Murati determined that claimant was at maximum medical improvement. Dr. Murati opined that claimant had a 15 percent whole person Class I impairment of the bladder. This is based on the fourth edition of the *AMA Guides*.³ Of the 15 percent impairment, Dr. Murati opined that 5 percent was

² P.H. Trans., Cl. Ex. 2.

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

preexisting, leaving her with a 10 percent whole person impairment attributable to her work-related accident. Dr. Murati restricted claimant to working “in an office with a private restroom which would be accessible within 10 yards of her position, as well as the ability to interrupt her work activities any time during the day that she needs to use the restroom.”⁴

In his report dated June 14, 2006, Dr. Lawton stated that claimant’s overactive bladder symptoms are now only treatable with medication which she does not tolerate well.⁵

Subsequent to her July 27, 2006 evaluation by Dr. Murati, claimant’s condition worsened. And ultimately, her bladder had to be removed. The procedure for removal of her bladder occurred on February 2, 2007. A cystectomy and Indiana pouch were performed. An Indiana pouch is what she uses to void her urine.

Claimant takes medication which helps with the overactive bladder symptoms.

Claimant testified that since losing her implant, the quality of her life has gone down a great deal.

PRINCIPLES OF LAW

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board’s jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Whether certain defenses apply?

The term “certain defenses” refers to defenses that dispute the compensability of the accident under the Workers Compensation Act.⁶

⁴ P.H. Trans., Resp. Ex. 3 (Dr. Murati’s July 27, 2006 report).

⁵ P.H. Trans., Cl. Ex. 4 at 3.

⁶ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

Additionally, the Board may review those preliminary hearing orders where it is alleged that an administrative law judge has exceeded his or her jurisdiction or authority in providing or denying the benefits requested.⁷

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁸

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁹ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

ANALYSIS

The issues of temporary total disability benefits and medical expenses are not jurisdictional issues subject to review from a preliminary hearing order. Further, administrative law judges have jurisdiction at preliminary hearings to grant or deny medical benefits and temporary total disability benefits. Therefore, in this case, the ALJ did not exceed his jurisdiction in denying claimant's request for additional medical and temporary total disability benefits. Accordingly, this appeal should be dismissed.

DECISION

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that claimant's appeal of the Order of Administrative Law Judge John D. Clark dated April 5, 2007, should be, and is hereby, dismissed.

IT IS SO ORDERED.

⁷ K.S.A. 2006 Supp. 44-551.

⁸ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

⁹ K.S.A. 44-534a.

Dated this ____ day of June, 2007.

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge